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HARPER v. VIRGINIA BOARD OF ELECTIONS 383 U.S. 663 (1966)

Harper epitomizes the WARREN COURT'S expansion of the reach of the EQUAL PROTECTION clause of the FOURTEENTH AMENDMENT. Virginia levied an annual $1.50 POLL TAX on residents over twenty-one, and conditioned voter registration on payment of accrued poll taxes. The Supreme Court, 6–3, overruled BREEDLOVE V. SUTTLES (1937), holding that the condition on registration denied the equal protection of the laws.

The *Harper* opinion, by Justice WILLIAM O. DOUGLAS, played an important part in crystallizing equal protection DOCTRINE by justifying heightened levels of judicial scrutiny. The Court did not quite hold that wealth or indigency was a SUSPECT CLASSIFICATION, saying only that "lines drawn on the basis of wealth of property, like those of race, are traditionally disfavored." It did say, following REYNOLDS V. SIMS (1964), that voting was a FUNDAMENTAL INTEREST, requiring STRICT SCRUTINY of its restriction. The poll tax by itself might be constitutionally unobjectionable; wealth as a condition on voting, however, not only failed the test of strict scrutiny; it was a "capricious or irrelevant factor."

For Justice HUGO L. BLACK, dissenting, *Harper* represented a relapse into judicial subjectivism through a variation on the "natural-law-due-process" formula he had decried in *Adamson v. California* (1947). The Virginia scheme was not arbitrary; it might increase revenues or ensure an interested electorate. The Court should not substitute its judgment for the Virginia legislature's. Justice JOHN MARSHALL HARLAN also dissented, joined by Justice POTTER STEWART. Harlan, who shared Black's views, added that it was arguable that "people with some property have a deeper stake in community affairs, and are consequently Page 1272 | Top of Article more responsible, more educated, more knowledgeable, more worthy of confidence, than those without means." That this belief was not his own did not matter; it was arguable, and that was all the RATIONAL BASIS standard demanded.

Commentators saw in *Harper* and other contemporary decisions a major shift away from the tradition of minimal judicial scrutiny of laws challenged under the equal protection clause. Invasions of interests of great importance, or discrimination against disadvantaged groups, appeared to call for judicial scrutiny more demanding than that required by the relaxed rational basis standard. Soon the Court found a formula for two levels of review: rational basis for most

"social and economic" legislation, and strict scrutiny for laws invading fundamental interests or employing suspect classifications.

The Court has not pursued *Harper's* suggestion that WEALTH DISCRIMINATION is suspect. VOTING RIGHTS, however, are firmly established as interests whose invasion demands strict scrutiny. Implicitly, as in cases involving ALIENS or ILLEGITIMACY, and explicitly, as in cases on SEX DISCRIMINATION, the Court has transformed its two levels of judicial scrutiny into a sliding-scale approach that is interest balancing by another name: the more important the interest invaded, or the more "suspect" the classification, the more the state must justify its legislation. In broad outline this development was portended in *Harper,* which exemplified not only Warren Court egalitarianism but also Justice Douglas's doctrinal leadership.

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